

EXHIBIT “A”

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATIONAL OILWELL VARCO, L.P.,

Plaintiff,

v.

JULIO GARZA,

Defendant.

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Case No. 4:22-CV-2006

DECLARATION OF EDWARD WHITNELL, JR.

Pursuant to 28 U.S.C. § 1746, I, Harrell Edward Whitnell, Jr., hereby declare under penalty of perjury that the following statements are true and correct:

1. Most of the facts stated below were discovered as a result of the court-ordered forensic inspection of Mr. Garza's computer and USB devices.

2. My name is Harrell Edward Whitnell, Jr. I am over twenty-one years of age and am competent to make this declaration. I am a global Vice President for National Oilwell Varco ("Varco") in its Renewables Division. I have been with Varco since 2003. I have a BS in Mechanical Engineering from Texas A&M. The facts I state herein are based either on personal knowledge; or on review of the depositions and exhibits in this case; or on my position with Varco and my review of Varco's records; or on investigative consultations with Varco employees and patent counsel.

3. The spreadsheets generated by the third-party reviewer in the forensic examination of Mr. Garza's USB and computer prove the following:

A. Before he quit working for Varco Mr. Garza engaged in wholesale downloading of files relating to Varco's proprietary Tracker project on at least the following dates:

i. April 13,¹ the day after sending his resume to Adam Kim;²

¹ On this date Mr. Garza copied approximately 76 Tracker files. See the yellow highlights on the spreadsheet generated by the Court-ordered examiner entitled "Garza_Designated_ExportFiles," and sorted by download dates, attached as Exhibit A-1.

² Mr. Kim is a Varco employee who was also involved in the Varco Tracker project.

- ii. April 19,³ the day he finished his Array interviews; and
 - iii. April 20,⁴ the day after finishing his Array interviews.
- B. On April 22, after resigning from Varco, Mr. Garza emailed from his Varco account to his personal Hotmail account the draft provisional patent application for a mounting system on Varco's Tracker ("US '778") and a file called Solar Panel Single Bolt Clamp. He filed them in a folder entitled "Important Stuff". This draft provisional patent application US '778, which is not accessible to the public, contains descriptions of NOV's proprietary mounting system and figures of said mounting system.⁵
- C. Mr. Garza then immediately accessed many of these files during the first two days on the job with Array, May 23 and 24.⁶
- D. On June 5th, two days *after* the TRO was entered and received by Mr. Garza, someone used the USB in question to access two design and design improvement files between Varco and one of Varco's suppliers.⁷ With this information, a competitor has valuable insight into Varco's supply chain and how to reduce Varco's costs for producing the parts for Varco's proprietary Tracker.⁸
- E. The information Mr. Garza took from Varco is enough to reverse engineer Varco's Tracker product; identify Varco's product improvements; identify Varco's suppliers; and impair Varco's ability to patent its Tracker product in many countries around the globe.

³ On this date Mr. Garza downloaded the "Task Summary and Outcomes" onto the USB. See the green highlight on Exhibit A-1. He also accessed this document after resigning. See Garza deposition excerpt page 41-44, Exhibit A-3.

⁴ On this date Mr. Garza copied another 12 NOV files re: Tracker. See the blue highlights on Exhibit A-1. He did this after receiving a verbal offer from Array and finishing his Array interviews on April 19. See Garza deposition excerpt page 35, Exhibit A-2 attached.

⁵ See Exhibit A-4. This provisional patent application was contained in an email from Varco's outside patent counsel. This highly sensitive attorney-client communication containing the provisional patent application materials was the email Mr. Garza forwarded to himself. This theft was completely unauthorized and took place after Mr. Garza resigned from Varco.

⁶ See the grey highlights on Exhibit A-5 attached, a copy of Exhibit A-1 sorted by last access date. On May 24 he also received what appears to be a Tracker related email from Adam Kim, an employee with Varco and who also worked on the Tracker system.

⁷ See the orange highlights on Exhibit A-5. The file entitled "NOV PP (002)" is an overview of a certain supplier's process to support Varco. It is confidential between Varco and the supplier under an NDA. The other file accessed on June 5th is very specific to changes that supplier proposed to help Varco make the pieces cheaper and faster to produce. Again covered under an NDA, this is much more damaging in terms of letting Array know about Varco's supply chain, how to produce the parts, how to reduce cost on them, etc.

⁸ These two documents constitute highly confidential design and design improvement files between Varco and a supplier – thus compromising not only the design but Varco's supply chain as well.

F. Before the TRO was entered Mr. Garza accessed information he later claimed was not needed⁹ when he gave his deposition on July 9 (Lump Sum Calculator accessed one time and Lump Sum Parameter Model accessed two separate times).¹⁰ This proprietary calculator and model can be used by Varco and any other company building solar tracking systems to test a solar tracker's design parameters and determine if the design is viable.¹¹

4. **Most importantly, on his first day on the job with Array, Monday, May 23 at approximately 2:30 pm, Mr. Garza sent from his personal computer's Hotmail account to his Array email address the Varco internal prototype photo of Varco's proprietary mounting system disclosed in US '778. Thus, the photo of Varco's proprietary mounting system, which is not public but is the subject of a provisional patent filed in December 2021, was placed on the Array server and shared with Array.**¹²

5. **Because Garza shared the photo of the underlying technology with Array, Garza technically made a public disclosure of the subject matter shown in the photo, specifically Varco's proprietary technology. The harm Garza caused by disclosing this confidential information is immeasurable. Through his wrongful actions Garza has eliminated Varco's ability to seek patent protection for design features shown in the photo but not already disclosed in US '778, in numerous countries around the world, including but not limited to China and all European countries.**¹³

6. Moreover, now that Array has access to images of Varco's proprietary technology Array has advance opportunity, which other companies in the marketplace do not have, to research prior technology that can be disclosed in an attempt to challenge any non-provisional patent application to be filed by Varco, prior to the deadline for doing so, and claiming a relationship to US '778. Array's advance knowledge also gives Array insight into Varco's commercial plans and an opportunity to being researching, designing, and developing a non-infringing, competing product.¹⁴

⁹ See Garza depo at p. 91, Exhibit A-6, attached.

¹⁰ These were both created specifically for Varco by a third-party vendor, and are not available to the public.

¹¹ See Garza depo at p. 90, Exhibit A-6, attached.

¹² **The third-party forensic examiner found the outgoing email on Mr. Garza's personal computer, but Array was allowed to conduct its own search of Mr. Garza's Array laptop. Array failed to find the incoming email on the Array issued laptop in spite of the fact that Mr. Garza had only been using the Array laptop for a very short period; a matter of weeks at most. See Exhibit A-10 attached.**

¹³ When Mr. Garza shared the photo with Array he made a public disclosure, as that term is used in the patent world, of the photo and the subject matter shown in the photo. To the extent that the photo shows design features not disclosed in US '778, Mr. Garza's public disclosure of the photo array bars Varco from seeking patent protection for such features in certain countries, such as China, all European countries, and likely Middle Eastern countries.

¹⁴ The prototype, which is the subject of the photo, is located at a Varco facility and confidential. When Mr. Garza shared the photo with Array he disclosed the technology to the public.

7. In his July 9 deposition Mr. Garza would not deny that he put items from the USB onto the Array laptop that was issued to him, and he admitted that the USB drive had been plugged into the Array laptop.¹⁵

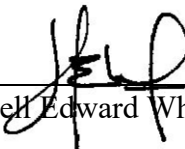
8. At least one document Garza downloaded from Varco was found on the Array system in an earlier examination in early June 2022, and discussed in the Court's June 21 hearing on Varco's motion to extend TRO.¹⁶

9. Today Array denies that any of the Varco files on the Court's file list are to be found on the Array laptop.¹⁷

10. The evidence described above shows that after joining Array Mr. Garza was in communication with Adam Kim, a Varco employee working at Varco on the Tracker project; accessed Varco's Tracker files from the first day of employment with Array until stopped by the TRO; converted Varco's attorney-client communication with provisional patent application attached; published to Array's server a photo of the Tracker prototype; and began performing duties for Array consistent with building the Tracker system.¹⁸

11. The ultimate value to Varco of the Tracker technology is likely measured in the hundreds of millions of dollars. The cost of the salaries alone for the research and development has exceeded a million dollars to date.

EXECUTED in Houston, Texas on this the 12th day of September 2022.



Harrell Edward Whitnell, Jr.

¹⁵ See Garza depo at pp 47; 96-97, Exhibits A-7 and A-8 attached.

¹⁶ Court's docket #15, p. 12, attached as Exhibit A-9.

¹⁷ See the August 23rd email from Array counsel, attached as Exhibit A-10. The Court-ordered forensic examiner found the image from US '778 on Mr. Garza's personal computer outbound to Mr. Garza's Array email account, but apparently Array did not look hard enough to find the incoming email on Mr. Garza's Array issued laptop.

¹⁸ Duties consistent with building the Tracker system are those laid out in Mr. Garza's job description at Array (improving processes, conducting research and development in next generation solar tracking systems, and leading the creation of specific design/analysis tools based on system models). See Array 0000012, attached as Exhibit A-11.